

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 882 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DHARMENDRA @ MUNNABHAI

VALJIBHAI JADAV

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP for Respondent No. 1 to 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

#. District Magistrate, Ahemdabad, passed an order on January 25, 2000, in exercise of powers under section 3(2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commoties Act, 1980, ("PBM Act"

for short), detaining the detenie under the provisions of the PBM Act.

#. The grounds of detention indicate that the detaining authority was satisfied that the activities of the detenie were detrimental to smooth supply of essential commodities like petrol. It was found that the activities included mixing of solvent in petrol and therefore, the authority considered the possibility of resorting to less drastic remedy for preventing the detenie from continuing his activities. But ultimately found that the alternative less drastic remedies may not prove to be as efficacious as detention under the PBM Act and that looking to the activities of the detenie, he was required to be immediately prevented from continuing his activities. Therefore, the detention under the PBM Act was the only efficacious remedy that can be resorted to. The petitioner was, therefore, detained under the PBM Act.

#. The detenie challenges the order of detention on various grounds. However, learned counsel Mr. Prajapati has restricted his arguments to the ground of delay in considering the representation by the Central Government. For this purpose, he has relied upon the affidavit-in-reply filed on behalf of the Union of India. The affidavit indicates that the representation dated 31st January, 2000 sent on behalf of the detenie was received by the Union of India on 17th February, 2000 through the State Government. Another representation dated 13th February, 2000 was received on February 18, 2000 and third representation dated February 8, 2000 was received on February 21, 2000 along with the parawise comments thereof. Thereafter, the Central Government considered the representations in light of the parawise comments and other relevant record and rejected the representation on 1st March, 2000. Mr. Prajapati therefore, submitted that the Central Government has not taken any action in respect of the first and second representation and even on third representation, there is delay of about 9 days i.e. from 21st February, to March 1, 2000, which has not been explained. Mr. Prajapati therefore, urged that the petition may be allowed on this ground as the right of the detenie of making an effective representative is adversely affected.

#. Mr. K.T.Dave, learned AGP has represented the State Government and the detaining authority. Mr. P.J.Davawala has opposed this petition on behalf of the Union of India. She placed reliance on the affidavit-in-reply filed on behalf of the Union of

India.

#. Having regard to the rival side contentions, the question that requires to be addressed to by this Court is whether there is delay on the part of the Union of India in considering the representation made on behalf of the detainee, and if so, whether it is explained, and if yes, whether that explanation is acceptable?

#. There is no dispute about the fact that the representation dated 31st January, 2000 addressed to the State Government was forwarded by the State Government to the Central Government vide their letter dated 16.2.2000 was received by the Central Government on 17th February, 2000. Another representation dated 13th February, 2000 made by the advocate for the detainee was received on 18.2.2000 through the State Government vide their letter dated 17.2.2000. A third representation dated February 8, 2000 made in favour of the detainee was received along with parawise comments on 21st February, 2000. The Competent Authority in the Central Government considered the representations along with parawise remarks and rejected the representation on 1st March, 2000. Under no circumstances, it can be said that the lapse of a period between 31st January, 2000 to 1st March, 2000 is even attempted to be explained. Why the representation of the present detainee was not attended to immediately is not explained and therefore, this inordinate delay in considering the representation has resulted into infringement of right of the detainee of making an effective representation. The continued detention, therefore, would be vitiated and the petition, therefore, deserves to be allowed.

#. This petition is allowed. The impugned order of detention dated January 25, 2000 is hereby quashed and set aside. The detainee - Dharmendra @ Munnabhai Veljibhai Jadav, is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-